

DRAFT JUNE 7, 2000

**AGREEMENT BETWEEN
THE UNITED STATES DEPARTMENT OF THE ARMY
AND
THE OZ ENTERTAINMENT CORPORATION
FOR CORRECTIVE ACTION AS TO PORTIONS OF
THE FORMER SUNFLOWER ARMY AMMUNITION PLANT**

Whereas, the United States Department of the Army ("Army") reported the former Sunflower Army Ammunition Plant ("Sunflower") to the General Services Administration ("GSA") as excess to the Army's needs;

Whereas, GSA has determined that Sunflower is available for disposal as surplus to the needs of the United States and has agreed to convey substantially all of Sunflower to the Kansas Statewide Projects Development Corporation ("KSPDC"), at its fair market value, for economic redevelopment purposes under the authority of 40 U.S.C. § 484(e)(3)(H) pursuant to the Conveyance Agreement;

Whereas, The OZ Entertainment Company ("OEC"), a corporation duly formed under the laws of the State of Delaware, has agreed to assume all obligations of the KSPDC to GSA with respect to GSA's conveyance of Sunflower to the KSPDC;

Whereas, OEC has agreed to remediate Sunflower as consideration for the property, and to ensure completion of all remedial action has: (1) entered into the Consent Order with the Kansas Department of Health and Environment ("KDHE") which obligates OEC to complete the remediation pursuant to KDHE's orders; (2) engaged a remediation contractor to perform the remediation ordered by KDHE; (3) purchased environmental insurance and a surety bond to provide financial assurances that the KDHE ordered remediation will be completed; (4) purchased a payment bond to ensure payment to the remediation contractor and a performance bond to ensure said contractor's performance; and (5) created an irrevocable trust to ensure the completion of the environmental remediation required by KDHE in the event that OEC is unable or unwilling to complete the remediation;

Whereas, the Army recognizes and acknowledges that it is ultimately responsible for the environmental remediation of contamination it caused at Sunflower to levels adequate to ensure protection of human health and environment irrespective of OEC's contractual obligations;

Whereas, as a material part of the consideration for the GSA's agreement to convey Sunflower pursuant to the Conveyance Agreement, OEC has agreed to complete corrective action of Sunflower as specifically set forth in the Consent Order;

Whereas, the completion of the parties' obligations under this Army Agreement will result in the fulfillment of the requirements necessary for the Army to grant the CERCLA Section 120(h)(3)(A)(ii) covenant for Sunflower.

Whereas, the United States Department of the Army ("Army") reported the former Sunflower Army Ammunition Plant ("Sunflower") to the General Services Administration ("GSA") as excess to the Army's needs;

Whereas, the Army and OEC have entered into this Army Agreement, which reflects the agreement of the parties with respect to their undertaking specified corrective action of Sunflower and all matters related thereto:

And, Whereas, the Army and OEC have entered into this Army Agreement, which reflects the agreement of the parties with respect to OEC's undertaking specified corrective action of Sunflower and all matters related thereto:

Now Therefore, the Army and OEC do hereby enter into this Army Agreement and agree to the following terms and conditions:

Section 1.0 Definitions. Unless otherwise expressly provided herein, whenever the terms listed below are used in this Army Agreement or in the exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

1.1 "Act" shall mean the Contract Disputes Act of 1978, as amended (41 U.S.C. §§ 601-613).

1.2 "AREP" shall mean the Army retained environmental program more fully described in Exhibit 1.

1.3 "AREP Property" shall mean those Tracts to be retained by the Army to carry out the AREP. A map generally describing this real estate is attached as Exhibit 2. The specific Tracts included within the AREP Property will not be determined until the Second Closing.

1.4 "Army Agreement" shall mean this agreement between the Army and OEC.

1.5 "Classification Agreement" shall mean the agreement between the KDHE and OEC dated _____, 2000 a copy of which is attached as Exhibit 3, setting out the procedures, criteria, and requirements for information in the determination of which Tracts are to transfer under a Covenant Deed and which are to transfer under a Deferred Covenant Deed.

1.6 "Closing" shall mean the transaction during which the property transfer documents, along with other documents, are executed and delivered by the Government and KSPDC to each other, and the Government transfers Sunflower to KSPDC pursuant to the Conveyance Agreement with the contemplation that there will be multiple Closings.

1.7 “Consent Order” shall mean the Consent Order between OEC, the Irrevocable Trust, and the KDHE dated _____, 2000, a copy of which is attached as Exhibit 4.

1.8 “Constituent of Concern” shall mean any substance that is a Hazardous Substance, petroleum, or a petroleum product.

1.9 “Contractor” shall mean IT Corporation and any successor or replacement contractor employed to perform the Corrective Action.

1.10 “Conveyance Agreement” shall mean the Memorandum of Agreement between the GSA and KSPDC dated _____, 2000.

1.11 “Corrective Action” shall mean all activities, except for Sections 62-66 of the Consent Order, to be undertaken by OEC in accordance with the SOWs, all final Work Plans (as defined in the Consent Order), and the other plans approved by KDHE, including without limitation AOC 2-9.

1.12 “Cost Cap Policy” shall mean an insurance policy, in the form attached hereto as Exhibit 5.

1.13 “Covenant Deed” shall mean a recordable quitclaim deed either in the form of Exhibit 6 or of Exhibit 7.

1.14 “Covenant PLL Policy” shall mean an insurance policy in the form attached hereto as Exhibit 8.

1.15 “Deferred Covenant Deed” shall mean a recordable quitclaim deed in the form of Exhibit 9.

1.16 “Deferred Covenant PLL Policy” shall mean an insurance policy in the form attached hereto as Exhibit 10.

1.17 “Deliverable” shall mean any work plan, report (except progress report), specification or schedule submitted pursuant to or required by the Consent Order.

1.18 “Facility Use Contract” shall mean the Facility Use Contract between the Army and Alliant Techsystems, Inc. regarding Sunflower dated _____.

1.19 “Financial Instruments” shall mean the Deferred Covenant PLL Policy, the Covenant PLL Policy, the Cost Cap Policy, the Surety Bond, and the Performance and Payment Bonds.

1.20 “Hazardous Substances” shall mean any substance that is defined or designated as a “hazardous substance” pursuant to either Section 101 or 102 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601 and 9602.

1.21 “Irrevocable Trust” shall mean the irrevocable standby trust, established pursuant to the Irrevocable Trust Agreement dated _____, 2000, a copy of which is attached hereto as Exhibit 11.

1.22 “KDHE Permits” shall mean KDHE solid waste disposal Permit 340 or KDHE industrial landfill Permit 684.

1.23 “Law or Regulation” means any federal, state, or local law, statute, code, ordinance, order, rule, regulation, judgment, decree, injunction, writ, edict, award, authorization, or other requirement by any national, state, county, municipal, or other government, or any agency, board, bureau, commission, court, department, or other instrumentality of any such government applicable to the Army.

1.24 “Master Plan” shall mean OEC’s plan for development of Sunflower, as of the date of this Army Agreement, a copy of which is attached as Exhibit 12.

1.25 “OEC Remediation Commitment” shall mean \$37,000,000 of Qualified Expenses.

1.26 “Performance and Payment Bonds” shall mean the performance bond and the payment bond provided by the Contractor, each in the form attached hereto as Exhibits 13 and 14, respectively.

1.27 “Personal Property” shall mean all federally owned, related personal property (as defined under either Kansas law or Army policy) present at Sunflower as of September 17, 1999 except the specific personal property identified, reserved, and retained by the Army and set out in Exhibit 15.

1.28 “Promissory Note” shall mean a non-recourse promissory note executed by KSPDC to the Government in the sum of \$15,000,000, in the form attached hereto as Exhibit 16.

1.29 “Qualified Expense” shall mean those expenses incurred by or on behalf of OEC or the Irrevocable Trust: (a) pursuant to the Classification Agreement; (b) for Corrective Action as determined by the KDHE pursuant to Section XV of the Consent Order; or (c) pursuant to Sections 9.2 or 9.3.

1.30 “RCRA Permit” shall mean Resource Conservation Recovery Act Hazardous Waste Facility Permit, No. 32138210878.

1.31 “Remediation” shall mean any remedial or corrective action that the Army is required to undertake under any Law or Regulation or this Army Agreement as to any Constituent of Concern at or associated with Sunflower.

1.32 “Remediation Contract” shall mean the “not to exceed” priced remediation services contract between the Contractor and OEC to carry out the Corrective Action.

1.33 “Routine Maintenance” shall mean (a) routine inspection of any Unit; (b) ordinary long-term monitoring, sampling, analysis, and reporting of defined and mutually agreed media

locations required for any Unit; (c) ordinary and necessary repair and maintenance of the landfill cap of any Unit; and (d) any other routine services for closure systems.

1.34 “Sewer” shall mean any subsurface structure at Sunflower, including without limitation, any sewer, chase, process piping, pipeline or basement.

1.35 “SOWs” shall mean the statement of work for the Work Plans (as defined in the Consent Order) required under the Consent Order and any modifications made in accordance with the Consent Order.

1.36 “Surety Bond” shall mean the bond in the form of Exhibit 17.

1.37 “Tract” shall mean a 500 foot by 500 foot square (or parts thereof) of the real property included in Sunflower as reflected in Exhibit 18.

1.38 “Transfer Date” shall mean, as to each Tract, the date of transfer of the Tract to OEC.

1.39 “Unit” shall mean any landfill subject to either KDHE Permit.

Section 2.0 Army Obligations. Except for the contractual obligations of OEC under this Army Agreement, the Army agrees that:

2.1 All matters necessary to result in fulfillment of the requirement to grant the CERCLA Section 120(h)(3)(A)(ii)(2) covenant for Sunflower remain the ongoing obligation of the Army.

2.2 The Army shall promptly remove, store, treat and/or dispose any unexploded ordnance, military chemical warfare agents or munitions, medical/infectious waste or nuclear or radioactive material; provided, however, that the Army is not responsible for any such contamination caused by the University of Kansas.

2.3 The Army shall remediate as required by any Law or Regulation, any Constituent of Concern existing on the Transfer Date and which migrated before or after the Transfer Date from Sunflower onto any other property.

2.4 The Army shall complete the AREP.

2.5 The Army shall complete all Remediation once OEC has reached the OEC Remediation Commitment consistent with Subsection 2.12.

2.6 The Army shall complete all actions determined to be required by KDHE for the proper and final closure of any Unit.

2.7 The Army shall carry out all post-closure responsibilities for Units (other than Routine Maintenance) including, without limitation, any Remediation arising from the closure of any Unit.

2.8 The Army shall complete and carry out all responsibilities under the RCRA Permit except for the Corrective Action being carried out by OEC pursuant to the Consent Order and this Army Agreement.

2.9 The Army shall complete, consistent with the Army's responsibility under CERCLA Section 120(h)(3)(A)(ii), any Remediation required for property transferred by Covenant Deed.

2.10 If, when the Army, as to any Sewer, is carrying out the AREP and OEC determines that, contemporaneous with the Army's effort, it would be cost effective or appropriate for OEC to carry out any Work associated with or adjacent to the Sewer, the Army shall coordinate, to the maximum extent possible, its activities with OEC to permit effective, cost efficient, and timely Corrective Action or development of Sunflower; provided that the Army does not reasonably expect to incur additional significant expenses as a result and the Work does not materially conflict with any applicable Army contract and is coordinated with the appropriate contracting officer.

2.11 The Army shall use its best efforts, consistent with applicable Laws and Regulations, to work cooperatively with OEC to achieve efficiencies and economies in their prospective performance of AREP, the Work, and any other Remediation or Corrective Action concerning Sunflower.

2.12 Once: (a) OEC reaches the OEC Remediation Commitment; and (b) the applicable benefits under the Financial Instruments are not, for any reason, forthcoming, the Army shall be responsible for completing the Remediation of Sunflower in order to provide for the timely grant of the CERCLA Section 120(h)(3)(a)(ii)(2) covenants without the need for any further agreement with OEC. However, notwithstanding any provision of this Army Agreement other than Subsection 2.12.1, once OEC reaches the OEC Remediation Commitment or at any time before or after the OEC Remediation Commitment is met, the Army shall have no responsibility to remediate Sunflower for other than non-residential use, with other uses such as commercial and childcare prohibited.

2.12.1 Subject to Subsection 2.12 and the Army's continuing responsibilities under CERCLA Section 120(h)(3), the Army acknowledges where Financial Instruments are not available that it shall have the responsibility to remediate to the standard of use permitted on Tracts which were transferred by the Army with a Covenant Deed or for which the Army, since issuing a Deferred Covenant Deed, has provided the CERCLA Section 120(h)(3)(a)(ii)(2) covenant.

2.13 Notwithstanding any standard risk-based priorities, the Army shall take all steps necessary to submit, as soon as possible, a budget request through established channels with the priority necessary to support its commitments under Subsection 2.12 and Subsection 2.9 in order to allow for timely development of Sunflower for funds to the Office of Management and Budget that adequately address the funding needs for the commitment. Providing said funds are received, the funding will not be used for any other purpose without the approval of the Assistant Secretary of the Army for Installations and the Environment. The Army will provide OEC ten

(10) business days prior written notice before such a decision becomes final; provided that such notice does not materially interfere in the exercise of the Army's national defense responsibilities.

Section 3.0 OEC Obligations.

3.1 OEC shall perform the Corrective Action and the Operation and Maintenance (as defined in the Consent Order), subject to the OEC Remediation Commitment.

3.2 OEC shall fully comply with the terms and requirements of the Consent Order, and any amendments thereto.

3.3 OEC shall remain obligated to complete the Corrective Action, until Qualified Expenses equal the OEC Remediation Commitment. Except as provided in Section 11.0 and subject to its commitments in Subsections 3.3.1, 3.3.2, and 3.3.3, OEC shall have no further obligation and shall not be required to incur any further expense to conduct Corrective Action relating to Sunflower including, without limitation, the Corrective Action, once its expenses equal the OEC Remediation Commitment.

3.3.1 Once OEC has incurred \$37,000,000 in Qualified Expenses, OEC shall, if required to complete the Corrective Action, initiate coverage of the Financial Instruments to the extent available. Alternatively, the Army shall be entitled to initiate coverage or cause OEC or the Irrevocable Trust to initiate such coverage.

3.3.2 Once the OEC Remediation Commitment has been reached and benefits under the Financial Instruments are forthcoming, notwithstanding any other provision of this Army Agreement, OEC shall continue or cause the Irrevocable Trust to perform the Corrective Action with the benefits of the Combined Cost Cap/PLL Policy or the PLL Policy until the benefits under the Financial Instruments are exhausted or not forthcoming.

3.3.3 OEC shall, if required to complete the Corrective Action, take reasonable necessary and appropriate actions: (a) to assure that the Contractor carries out its obligations under the Remediation Contract; and (b) to exercise the Performance and Payment Bonds.

3.4 Upon reaching the OEC Remediation Commitment subject to Subsections 3.3.1, 3.3.2, and 3.3.3, OEC shall cooperate in good faith with the Army in the Army's completion of the Remediation of Sunflower, provided that OEC does not reasonably expect to incur significant expense without reimbursement from the Army as a result of such cooperation. The Army acknowledges, however, that it shall be solely responsible for any amounts the Army expends at Sunflower for Remediation and shall have no claim or cause of action against OEC as to such sums.

3.5 OEC shall make available to the Army, at OEC's reasonable duplication cost, any analyses, information, reports, test and sampling data, documents, and other materials and work product generated by OEC, its agents or contractors in conducting Corrective Action of

Sunflower, to the extent not previously furnished to the Army; provided that the provision of such materials to the Army does not compromise any privilege to which may otherwise apply to such documents or which would otherwise cause OEC to violate a contractual obligation regarding the confidentiality of such documents or any data they may contain.

3.6 OEC shall use its best efforts, consistent with applicable Laws and Regulations, to work cooperatively with the Army to achieve efficiencies and economies in their prospective performance of AREP, the Work, and any other Remediation or Corrective Action concerning Sunflower.

3.7 OEC shall perform the Routine Maintenance.

3.8 OEC shall enter into the Remediation Contract.

3.9 At the First Closing, OEC shall, at its own expense, furnish or cause to be furnished to the Army evidence of the following financial assurance mechanisms as to the Corrective Action.

3.9.1 The Performance and Payment Bonds;

3.9.2 The Deferred Covenant PLL Policy;

3.9.3 The Cost-Cap Policy;

3.9.4 The Surety Bond;

3.9.5 The Covenant PLL Policy; and

3.9.6 The Irrevocable Trust.

The Performance and Payment Bonds shall be supplied by sureties deemed to be reasonably satisfactory to the Army acceptable as sureties and re-insurers on Federal bonds under 31 U.S.C. Sections 9304 and 9308, as listed in the current version of Department of the Treasury Fiscal Service Circular 570.

3.10 The parties agree that the liability of OEC with regard to this Army Agreement will be limited to the OEC Remediation Commitment, except: (a) as provided for in Sections 8.0 and 10.0; or (b) any recovery by OEC, net cost of recovery, from the Contractor for Corrective Action not performed by the Contractor and actually performed by the Army.

3.11 Subject to the provisions of this Army Agreement, including (without limitation) Subsections 3.3.1, 3.3.2, and 3.3.3 and Sections 2.0 and 11.0, OEC shall be responsible for all corrective action, operation and Maintenance (as defined in the Consent Order) and/or remediation at Sunflower.

Section 4.0 Army Representations. In entering into this Army Agreement, the Army represents that:

4.1 The reports, studies and analyses identified in Exhibit 19 constitute all of the information which exists regarding Constituents of Concern at Sunflower, building drawings and specifications, process piping drawings and specifications, and site infrastructure drawings and specifications, (collectively, "Reports"). The Army has provided OEC with a copy of each of the Reports. OEC may rely on this representation by the Army, without limitation, as it relates to any claim against OEC of noncompliance, liability, losses, or damages arising under an environmental law or regulation or involving the release, movement, or migration of any Constituent of Concern. For all other purposes (e.g., consequential damages relating to any project delay or claims for damages against the United States), this representation is limited to information presently known to the Army.

4.2 The Reports identify all: underground storage tanks which exist or have existed at or under Sunflower; wells which exist on Sunflower; releases of Constituents of Concern; and locations of manufacturing operations, Constituents of Concern storage, treatment, and disposal sites on Sunflower, Constituents of Concern handling locations on Sunflower, and permitted and unpermitted landfills, whether temporary or permanent; and the existence of Constituents of Concern at Sunflower. OEC may rely on this representation, without limitation, as it relates to any claim against OEC of noncompliance, liability, losses, or damages arising under an environmental law or regulation or involving the release, movement, or migration of any Constituent of Concern. For all other purposes (e.g., consequential damages relating to any project delay or claims for damages against the United States), this representation is limited to information presently known to the Army.

4.3 Except as set out in Exhibit 20, the Army is not aware of any unresolved, formal written notice of any claims or liabilities or threatened claims or threatened liabilities associated, directly or indirectly, with the existence of a Constituent of Concern on Sunflower from any third party, adjoining land owner, environmental interest group, former owner or operators of Sunflower, former employees, contractors, agents, or other persons.

4.4 Exhibit 21 is a list of all permits presently held or required to be held by the Army pursuant to any state, federal, or local environmental law, statute, or regulation ("Permits"). The Army has provided OEC with a copy of each of the Permits.

4.5 The Army is in material compliance with the terms of each Permit as well as applicable state, federal, or local environmental law, statute, regulation, order or requirement.

4.6 Exhibit 22 is a list of all licenses, leases, facility use contracts, and other contracts or arrangements to which the Army is currently a party and which provides access to or rights of possession in Sunflower ("Leases"). The Army has provided a copy of each of the Leases to OEC.

4.7 Exhibit 23 is a list of all current tenant use agreements existing under the facility use agreement with the Army is currently a party and which provides access to or rights of

possession in Sunflower ("Tenant Use Agreements"). The Army has provided a copy of each Tenant Use Agreement to OEC.

4.8 To the best of the Army's knowledge, Exhibit 24 is a list of all licenses, leases, facility use contracts and other contracts or arrangements to which the Army has been a party and which provided access to or rights of possession in Sunflower since 1940 other than the Leases ("Old Leases"). Except as set out in Exhibit 25, the Army has provided a copy of each Old Lease to OEC.

4.9 To the best of the Army's knowledge, Exhibit 26 is a list of all tenant use agreements under any facility use contract which provided access to or rights of possession in Sunflower since 1940 other than the Use Agreements ("Old Tenant Use Agreements"). Except as set out in Exhibit 27, the Army has provided a copy of each Old Tenant Use Agreement to OEC.

4.10 Sunflower is not a property listed on the NPL (as defined in the Consent Order).

4.11 The Related Personal Property includes, but is not limited to, the property set out in Exhibit 28.

4.12 To the best of the knowledge and belief of the Army and those signing this Army Agreement on behalf of the Army, the information furnished to OEC pursuant to this Army Agreement is true, correct, and complete in all material respects.

4.13 The representations in this Section 4.0 shall survive any revocation, termination or expiration of this Army Agreement.

Section 5.0 OEC Representations. In entering into this Army Agreement, OEC represents that:

5.1 OEC has not released any Constituent of Concern from or on to Sunflower.

5.2 OEC has not received formal written notice of any claims or liabilities or threatened claims or threatened liabilities associated, directly or indirectly, with the existence of a Constituent of Concern on Sunflower, from any third party, adjoining land owner, environmental interest group, former owner or operators of Sunflower, former employees, contractors, agents, or other persons.

5.3 OEC is a duly formed corporation in good standing under the laws of the State of Delaware and is authorized to do business in the State of Kansas.

5.4 OEC has full capacity, right, power and authority to execute, deliver and perform this Army Agreement and all documents to be executed by OEC pursuant hereto, and all required action and approvals therefor have been duly taken and obtained. The individuals signing this Army Agreement and all other documents executed or to be executed pursuant hereto on behalf of OEC are and shall be duly authorized to sign the same on behalf of OEC and to bind OEC thereto.

This Army Agreement and all documents to be executed pursuant hereto by OEC are and shall be binding upon and enforceable against OEC in accordance with their respective terms.

5.5 To the best of the knowledge and belief of OEC and those signing this Army Agreement on behalf of OEC, the information furnished to the Army pursuant to this Army Agreement is true, correct and complete in all material respects.

5.6 Except as set out in Exhibit 29, there are no other agreements, including (without limitation) partnerships, joint ventures, or equity investments, to which OEC is a party which relates to the conduct of the Corrective Action.

5.7 The representations in this Section 5.0 shall survive any revocation, termination or expiration of this Army Agreement.

Section 6.0 Army Review and Receipt of Documentation.

6.1 OEC shall provide the Army, at the address set out in Subsection 15.1.1 with 2 copies of each Deliverable it is required to provide KDHE under the Consent Order. The Army shall have the same period of time accorded to the KDHE, if any, to review and to comment upon such Deliverable.

6.2 Upon execution of any Deliverable referred to in Subsection 6.1, OEC shall forthwith furnish the Army with a copy of that executed document.

6.3 If a claim of privilege or confidentiality as to documents otherwise required to be provided to the Army pursuant to Subsection 3.5 is made by OEC, the Army may request an in camera review by the Federal District Court where such documents are located.

Section 7.0 OEC Review and Receipt of Documentation.

7.1 The Army shall provide OEC with copies of each document it is required to provide the EPA or the KDHE in order to carry out the AREP or the Army's responsibilities as identified in Subsections 2.2 through 2.9. OEC shall have 60 days to review and to comment upon such document.

7.2 Upon execution of any document referred to in Subsection 7.1, the Army shall forthwith furnish OEC with a copy of the executed document.

7.3 The Army shall keep OEC timely and completely informed of the activities being undertaken in connection with the AREP including, without limitation, copies of all drafts and final work plans, reports, specifications, lab analyses, work schedules and other deliverables

Section 8.0 Shared Use. Until the Army completes the AREP, the Army and OEC shall both be present at and carry out activities at Sunflower. To reduce disputes and to facilitate cooperation, the Army and OEC agree to conduct themselves in accordance with the Use Agreement set out in Exhibit 30, a copy of which is attached hereto and incorporated herein.

Section 9.0 Army Financial Commitments.

9.1 The Army commits to seek Congressional appropriations to enable the AREP to be completed in accordance with the timeline set forth in the AREP. Consistent with the Army's commitment, the Army will take all necessary steps to submit funding requests through channels to the Office of Management and Budget. The parties agree that the completion of the AREP is critical to the successful redevelopment of Sunflower. To the extent appropriated by the Congress, funds administratively reserved by the Army for the AREP will not be utilized for any other purpose without the specific approval of the Assistant Secretary of the Army for Acquisition Logistics, and Technology. The Army will provide OEC ten (10) business days prior written notice before such a decision becomes final; provided that such notice does not materially interfere in the exercise of the Army's national defense responsibilities.

9.2 In the event that it is reasonable for OEC to conclude the AREP will not be completed in accordance with the timeline set forth in Exhibit 31, the Army will, at the request of OEC, grant a right of entry to OEC to complete those portions of the AREP it deems necessary for further development; provided that: (i) any such work by OEC shall be at OEC's sole cost and expense without any claim for reimbursement from the United States, except that any Remediation expenses incurred by OEC pursuant to this subsection will be a Qualified Expense; and (ii) all such work shall be in accordance with Exhibit 1, as applicable; provided that any such work shall not materially interfere with any existing government contract(s) and be coordinated with the contracting officer for such contract(s).

9.3 Any Constituents of Concern transported or disposed offsite as a result of activities undertaken by or on behalf of OEC pursuant to Subsections 3.1 or 9.2 shall be transported and disposed of naming the Army as the owner and generator of such Constituents of Concern. The Army agrees to sign such necessary documentation. Costs incurred by or on behalf of OEC pursuant to this subsection will be a Qualified Expense. OEC agrees that the Remediation Contract shall require that the Contractor provide the Army with sufficient and accurate written information to allow the Army to sign the necessary documents for the compliant transport and execution of disposal documentation meeting the requirements of all Laws and Regulations for the Constituents of Concern as provided in this subsection.

Section 10.0 Indemnification.

10.1 Except for Qualified Expenses, OEC agrees to indemnify and hold the United States, its officers, agents, and employees harmless from any and all costs relating to: (a) claims, liability, costs, loss, death, injury, fines and penalties, or any damage to the extent arising out of OEC's or any of its agent's, employee's, or contractor's response actions or any other activity on Sunflower; (b) OEC's or any of its agent's, employee's, or contractor's transportation, treatment, and/or disposal of Constituents of Concern removed from Sunflower; or (c) subject to the OEC Remediation Commitment, OEC's, its agent's, employee's, or contractor's failure to complete the Corrective Action in accordance with this Army Agreement.

10.2 This Section 10.0 shall survive any revocation, termination, or expiration of this Agreement.

Section 11.0 Responsibilities.

11.1 Except as otherwise provided for in this Army Agreement, as between the Army and OEC, the Army shall be solely responsible for and OEC shall have no liability or responsibility for claims, liability, costs, loss, death, injury, fines and penalties, or any damage to the extent or arising out of: (a) any remediation or other activities at Sunflower, including the transportation, treatment or disposal of Constituents of Concern conducted by the Army, its agents, employees, lessees or contractors prior to the date of this Army Agreement or in order to fulfill the Army's responsibilities under Subsections 2.2 through 2.9 above; (b) natural resource damages, except those caused solely by OEC in activities other than pursuant to the Classification Agreement, the Army Agreement or the Consent Order; (c) any activities at Sunflower prior to the last Transfer Date of the Tract involved except those actions of OEC, its agents, employees, contractors, licensees, or invitees which are unlawful, improper, or negligent; or (d) the disposal, transfer, or storage of any Constituents of Concern by or on behalf of the Army which originated on Sunflower onto any real estate other than Sunflower; provided, however, that the Army is not responsible for Constituents of Concern disposed of in an unlawful, improper, or negligent manner by OEC or its agents, employees, contractors, or licensees pursuant to Section 9.0 of this Army Agreement.

11.2 This Section 11.0 shall survive any revocation, termination, or expiration of this Army Agreement.

Section 12.0 Dispute Process.

12.1 This Army Agreement is subject to the Act.

12.2 Except as provided in the Act, all disputes arising under or relating to this Army Agreement shall be resolved under this Section 12.0.

12.3 "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this Army Agreement. A claim arising under this Army Agreement, unlike a claim relating to the Army Agreement, is a claim that can be resolved under a contract clause that provides for the relief sought by OEC. However, a written demand or written assertion by OEC seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by Subsection 12.5. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

12.4 A Claim by OEC shall be made in writing and, unless otherwise stated in this Army Agreement, submitted within 6 years after accrual of the Claim to _____ ("Contracting Officer") for a written decision. A claim by the Army against OEC shall be subject to a written decision by the Contracting Officer.

12.5 OEC shall provide the certification specified in Subsection 12.7 of this clause when submitting any Claim --

- (a) Exceeding \$100,000; or
- (b) Regardless of the amount claimed, when using --
 - (1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or
 - (2) Any other alternative means of dispute resolution ("ADR") technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act of 1996 ("ADRA").

12.6 The certification requirement in Subsection 12.7 does not apply to issues in controversy that have not been submitted as all or part of a Claim.

12.7 The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which OEC believes the Government is liable; and that I am duly authorized to certify the claim on behalf of OEC." The certification may be executed by any person duly authorized to bind OEC with respect to the Claim.

12.8 For OEC's Claims of \$100,000 or less, the Contracting Officer must, if requested in writing by OEC, render a decision within 60 days of the request. For OEC's certified Claims over \$100,000, the Contracting Officer must, within 60 days, decide the Claim or notify OEC of the date by which the decision will be made.

12.9 The Contracting Officer's decision shall be final unless OEC appeals or files a suit as provided in the Act.

12.10 If the Claim by OEC is submitted to the Contracting Officer or a claim by the Army is presented to OEC, the parties, by mutual consent, may agree to use ADR. If OEC refuses an offer for alternative disputes resolution, OEC shall inform the Contracting Officer, in writing, of OEC's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any Claim, regardless of amount, shall be accompanied by the certification described in Subsection 12.7, and executed in accordance with Subsection 12.7.

(a) The Army shall pay interest on the amount found due and unpaid from

- (1) the date that the Contracting Officer receives the Claim (certified, if required); or
- (2) the date that payment otherwise would be due, if that date is later, until the date of payment.

With regard to Claims having defective certifications, as defined in Federal Acquisition Regulation Subpart 33.201, interest shall be paid from the date that the Contracting Officer initially receives the Claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the Claim and then at the rate applicable for each 6-month period as fixed by the Secretary of the Department of the Treasury during pendency of the Claim.

(b) OEC shall proceed diligently with performance of this Agreement pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Agreement, and comply with any decision of the Contracting Officer.

Section 13.0 Delays in Performance. Notice.

13.1 Delays that result from causes not foreseeable and beyond a party's control and which cannot be overcome by due diligence, shall not be a violation of its obligations under this Army Agreement. Due diligence is defined for purposes of this Army Agreement as the measure of prudence, activity, and foresight reasonably expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances. Each party shall notify the other party orally as soon as possible, but no later than five (5) working days after the party knows of any delay or anticipated delay in compliance with the requirements of the Army Agreement, and shall confirm such notice in writing no later than five (5) working days after the oral notification of the delay. The written notice shall describe the nature of the delay, whether and why the delay was unforeseeable and beyond the control of the party, the actions taken and/or that will be taken to mitigate, prevent and/or minimize further delay, and the anticipated length of the delay. The party shall adopt all measures to avoid or minimize such delay. To the extent a delay is caused by circumstances beyond the control of the party, or those resulting from delays caused by the party or any third party not under total control or employment of any of the signatories hereto, the schedule shall be extended for a period equal to the delay resulting from such circumstances.

Section 14.0 Event of Default.

14.1 It shall be an Event of Default hereunder upon the occurrence or any one or more of the following events:

14.3.1 Any of OEC's warranties or representations set forth herein are untrue or inaccurate in any material respect;

14.3.2 OEC fails to meet, comply with, or perform any of its material undertakings pursuant to this Army Agreement;

14.3.3 OEC materially breaches any provision of this Army Agreement; or

14.3.4 OEC materially breaches the Consent Order.

14.2 Subject to Subsection 14.5, if an Event of Default occurs pursuant to Subsection 15.1, the Army may, at its option, do any of the following:

14.3.1 Bring action against OEC for damages or specific performance;

14.3.2 Collect all reasonable costs and expenses incurred pursuant to remedies provided including, but not limited to, reasonable attorneys' fees;

14.3.3 Exercise any other rights set out in this Army Agreement or in any Law or Regulation; or

14.3.4 Exercise such other rights in law or equity as may exist.

14.3 It shall be an Event of Default under this Army Agreement upon the occurrence of any one or more of the following events:

14.3.1 Any of the Army's warranties or representations set forth herein are untrue or inaccurate in any material respect;

14.3.2 The Army fails to meet, comply with, or perform any of its material undertakings pursuant to this Army Agreement;

14.3.3 The Army materially breaches any provision of this Army Agreement; or

14.3.4 The Army causes OEC to breach the Consent Order or the Conveyance Agreement.

14.4 Subject to Subsection 14.5, if the Army defaults pursuant to Subsection 14.3, OEC may, at its option, do any of the following:

14.4.1 Bring action against the Army for damages;

14.4.2 Collect all reasonable costs and expenses incurred pursuant to remedies provided including, to the extent permitted by Law or Regulation, reasonable attorneys' fees;

14.4.3 Exercise any other rights set out in this Army Agreement or in any Law or Regulation; or

14.4.4 Exercise such other rights in law or equity as may exist.

14.5 Each Party shall, upon written notice, have thirty (30) days to commence a substantial cure of any Event of Default which occurs pursuant to this section.

Section 15.0 Notice. General Provisions

15.1 Any notice required to be given under this Agreement shall be provided as follows:

15.1.1 As to the Army:

U.S. Army Munitions and Armament Command
Environmental Restoration Team
SOSMA-ISE-R, 1 Rock Island Arsenal
Rock Island, IL 61299-5000

15.1.2 As to OEC:

The Oz Entertainment Company
11845 Olympic Boulevard
Suite 695
Los Angeles, CA 90064
Attn: Ms. Francoise Mattice

with a copy to:

Scott A. Young
Polsinelli White Vardeman & Shalton
700 West 47th Street, Suite 1000
Kansas City, MO 64112

15.2 The Army's obligation to perform actions, or to pay or to reimburse money under this Army Agreement is subject to the availability of appropriated funds and the provisions of the Anti-Deficiency Act. The Parties believe and intend that nothing in this Army Agreement is violative of the Anti-Deficiency Act.

15.3 The parties hereto agree the KSPDC does not assume any responsibility or liability under the provisions of this Army Agreement and hereby agree that any existing Constituent of Concern or liability and/or arising under any environmental law with respect to or related to Sunflower has not been caused by the KSPDC.

15.4 Unless otherwise provided, days shall mean calendar days and not business days.

15.5 Whenever consent of a party is required by this Army Agreement, said consent shall not be unreasonably withheld.

15.6 This Army Agreement and its Exhibits hereto contain the entire agreement between the parties regarding the Remediation of Sunflower, and any agreement hereafter made shall not operate to change, modify, or discharge this Army Agreement in whole or in part, unless that agreement is in writing and signed by the party sought to be charged with it.

15.7 Nothing contained in this Army Agreement will make or will be construed to make the parties hereto partners or joint venturers. Nothing contained in this Army Agreement shall render or be construed to render either of the parties hereto liable to any third party for debts or obligations of the other party hereto.

15.8 The failure of either party to insist in any one or more instances upon strict performance of any of the terms, covenants, or conditions of this Army Agreement shall not be construed as a waiver or a relinquishment of that party's rights to the future performance of any such terms, covenants, or conditions by the other party, in accordance with the terms hereof.

15.9 The brief headings or titles preceding each section are merely for purposes of identification, convenience, and ease of reference and will be completely disregarded in the construction of this Army Agreement.

15.10 This Army Agreement is executed in two (2) counterparts, each of which is deemed an original of equal dignity with the others and which is deemed one and the same instrument as the other.

15.11 All personal pronouns used in this Army Agreement, whether used in the masculine, feminine, or neuter gender, will include all other genders.

15.12 OEC may not transfer or assign its rights and interests under the Army Agreement without the written consent of the Army except that OEC may make such transfer or assignment to any organization, corporation, successor corporation, limited liability company, partnership, future subsidiary, or joint venture which OEC controls. The covenants, agreements, rights, and responsibilities contained in this Army Agreement inure to the benefit of and are binding upon the parties hereto, their successors and assigns. Nothing in this Army Agreement otherwise shall be construed as creating any rights of enforcement by any person or entity that is not a party hereto, nor any rights, interest, or third party beneficiary status for any entity or person other than the parties hereto. Notwithstanding OEC's right to assign its rights and interests under this Army Agreement, unless the Army, at its sole discretion, otherwise consents and agrees in writing, no assignment shall divest OEC of its obligation to carry out the undertakings set out in this Army Agreement.

15.13 All of the Exhibits attached hereto are by this reference incorporated herein and made a part hereof.

15.14 This Army Agreement shall be governed by and construed and interpreted in accordance with federal law and, to the extent applicable under the laws of the State of Kansas.

15.15 Nothing set forth in this Army Agreement shall be construed to have waived any rights under any statutory law.

15.16 OEC agrees to waive all rights to bring claims for contribution under 42 U.S.C. § 9607 against Alliant for contamination at Sunflower caused by the Army; provided that this waiver shall not apply as to claims against the Army once OEC has performed all contractual obligations required under this Army Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand by the authority of the Secretary of the Army, this ____ day of _____, 2000.

UNITED STATES DEPARTMENT OF THE ARMY

By: _____
Paul W. Johnson
Deputy Assistant Secretary
(OASA(I&E))

THE OZ ENTERTAINMENT COMPANY

By: _____
Robert Kory
Chief Executive Officer

<u>Exhibit</u>	<u>Title</u>	<u>Cite</u>
1	AREP	1.2
2	AREP Property	1.3
3	Classification Agreement	1.5
4	Consent Order	1.7
5	Cost Cap Policy	1.12
6	Covenant Deed	1.13
7	Covenant Deed	1.13
8	Covenant PLL Policy	1.14
9	Deferred Covenant Deed	1.15
10	Deferred Covenant PLL Policy	1.16
11	Irrevocable Trust	1.21
12	Master Plan	1.24
13	Performance Bond	1.26
14	Payment Bond	1.26
15	Personal Property	1.27
16	Promissory Note	1.28
17	Surety Bond	1.36
18	Tract Map	1.37
19	List of Reports	4.1
20	Claims and Liabilities	4.3
21	List of Permits	4.4
22	List of Leases	4.6
23	List of Tenant Use Agreements	4.7
24	List of Old Leases	4.8
25	Missing Old Leases	4.8
26	List of Old Tenant Use Agreements	4.9
27	Missing Old Tenant Use Agreements	4.9
28	Related Personal Property	4.11
29	Contract Disclosure	5.6
30	Use Agreement	8.0
31	AREP Timetable	9.2

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